

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UPS STORE, INC.; UNITED PARCEL
SERVICE, INC.; and UNITED PARCEL SERVICE
OF AMERICA, INC.,

Plaintiffs/Counterclaim-Defendants,

-against-

ROBERT HAGAN; THOMAS HAGAN; RIDGE
ASSETS, INC.; 3A, INC.; RIDGEPAC, INC.;
TANMOR, INC.; RIDGE LOGISTICS, LLC;
TOMMYS DOC SQUAD, LLC; RIDGEDOWN,
INC.; ROBPACK, LLC; RIDGE PEN, LLC;
TOMPACK, LLC; BIGPACK LLC; and NYPS,
LLC,

Defendants/Counterclaim-Plaintiffs,

-against-

BRADLEY KAPLAN, *et al.*,

Third-Party Defendants.

Case No. 14-cv-1210(WHP)(GWG)

**DECLARATION OF
BLAIR C. FENSTERSTOCK**

I, Blair C. Fensterstock, under penalty of perjury, declare as follows:

1. I am the Managing Partner at Fensterstock & Partners LLP, counsel for Robert and Thomas Hagan and their affiliated entities (the “Hagans”). I am a member in good standing of the bar of the State of New York and admitted to practice before the United States District Court for the Southern District of New York. I respectfully submit this declaration to put before the Court true and genuine copies of documents cited in the Hagans’ Memorandum of Law in Opposition to Plaintiff/Counterclaim Defendants’¹ and Third-Party Defendants’² Joint Motion for Summary Judgment and the Hagans’ Responses and Objections to Movants’ Local Rule 56.1

¹ Herein, The UPS Store, Inc. is referred to as “TUPSS” and UPS, Inc. is referred to as “UPS.”

² Herein, the Third-Party Defendants are collectively referred to as the “Franchisees.”

Statement of Material Facts and Counter-Statement of Undisputed Material Facts. This declaration is made upon personal knowledge.

2. Attached hereto as Exhibit 1 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00100606.

3. Attached hereto as Exhibit 2 is a true and genuine copy of the transcript of Tripp Singer's January 23, 2017 deposition.

4. Attached hereto as Exhibit 3 is a true and genuine copy of an email from Tim Davis dated May 14, 2013, Bates stamped BK0003957.³

5. Attached hereto as Exhibit 4 is a true and genuine copy of an email from Tim Davis dated November 6, 2013, Bates stamped BK0003217-3218.

6. Attached hereto as Exhibit 5 is a true and genuine copy of the transcript of Robert Hagan's November 10, 2016 deposition.

7. Attached hereto as Exhibit 6 is a true and genuine copy of the transcript of Thomas Hagan's November 1, 2016 deposition.

8. Attached hereto as Exhibit 7 is a true and genuine copy of an email from Tripp Singer dated September 8, 2012, attaching the TUPSS Manhattan Area Update dated September 7, 2012 and TUPSS's Small Business Gateway Checklist, Bates stamped UPS_0007536-7546.

9. Attached hereto as Exhibit 8 is a true and genuine copy of TUPSS's In-Store Experience I Participant Guide, Bates stamped BK0004114-4685.

10. Attached hereto as Exhibit 9 is a true and genuine copy of an email from Tripp Singer dated January 19, 2013, attaching the Customer Packed Shipping/Packing Script, Bates stamped UPS_0007281, UPS_0007289-7290.

³ On May 23, 2017, Movants consented to filing documents they had marked as "Confidential" or "Highly Confidential" that the Hagans identified, with certain exceptions that the parties agreed to file under seal, which the Court so ordered on May 26, 2017, ECF No. 378.

11. Attached hereto as Exhibit 10 is a true and genuine copy of TUPSS's Sales and Service Training Guide from 2010, Bates stamped KS0001367-1426.

12. Attached hereto as Exhibit 11 is a true and genuine copy of an email from Bradley Kaplan dated March 31, 2014, attaching a Notice of Material Default Letter addressed to Bradley Kaplan and a page from TUPSS's In-Store Experience I Participant Guide, Bates stamped BK0004749-4755.

13. Attached hereto as Exhibit 12 is a true and genuine copy of the transcript of Jose Contreras' January 24, 2017 deposition.

14. Attached hereto as Exhibit 13 is a true and genuine copy of the transcript of James C. Hillquist's November 11, 2015 deposition.

15. Attached hereto as Exhibit 14 is a true and genuine copy of Bradley Kaplan's Franchise Agreement, Bates stamped BK0002471-2626.

16. Attached hereto as Exhibit 15 is a true and genuine copy of the Mohan Buxani Notice of Material Default, dated March 21, 2014, Bates stamped UPS_0020771-773.

17. Attached hereto as Exhibit 16 is a true and genuine copy of the Kevin Panchmia Notice of Material Default, dated March 21, 2014, Bates stamped UPS_0020815-817.

18. Attached hereto as Exhibit 17 is a true and genuine copy of the Abu Rahman Notice of Material Default, dated March 21, 2014, Bates stamped UPS_0022455-2458.

19. Attached hereto as Exhibit 18 is a true and genuine copy of the Ketan Seth Notice of Material Default, dated March 21, 2014, Bates stamped UPS_0020806-809.

20. Attached hereto as Exhibit 19 is a true and genuine copy of the Jerome Taylor Notice of Material Default, dated March 21, 2014, Bates stamped UPS_0020779-782.

21. Attached hereto as Exhibit 20 is a true and genuine copy of the Declaration of Paul Puccini, dated December 4, 2015 (ECF No. 119).

22. Attached hereto as Exhibit 21 is a true and genuine copy of the Exhibits to the Declaration of Paul Puccini dated December 4, 2015 (ECF No. 119-1).

23. Attached hereto as Exhibit 22 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100609.

24. Attached hereto as Exhibit 23 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00100613.

25. Attached hereto as Exhibit 24 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00100614.

26. Attached hereto as Exhibit 25 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00100616.

27. Attached hereto as Exhibit 26 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00100619.

28. Attached hereto as Exhibit 27 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00100622.

29. Attached hereto as Exhibit 28 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100624.

30. Attached hereto as Exhibit 29 is a true and genuine copy of the transcript of Bradley Kaplan's January 18, 2017 deposition.

31. Attached hereto as Exhibit 30 is a true and genuine copy of an email from mvanslyke@upsstore.com forwarding a *New York Post* article dated May 4, 2015, Bates stamped UPS_0019595-9596.

32. Attached hereto as Exhibit 31 is a true and genuine copy of the transcript of Judith Milner's December 16, 2016 deposition.

33. Attached hereto as Exhibit 32 is a true and genuine copy of an email from Tripp Singer dated March 9, 2013, attaching a Manhattan Area Update dated March 8, 2013, and a Bonus Plan template, Bates stamped UPS_0009303-9311.

34. Attached hereto as Exhibit 33 is a true and genuine copy of an email from Calvin Wright regarding a Kaplan Customer Complaint, dated September 6, 2013, Bates stamped BK0003973-3975.

35. Attached hereto as Exhibit 34 is a true and genuine copy of an email from Mercedes Ortega regarding the Kaplan Customer Concern: David Islas, dated September 18, 2013, Bates stamped BK0003195.

36. Attached hereto as Exhibit 35 is a true and genuine copy of the 2011, 2012, and 2013 Hagan Revenue Reports, Bates stamped HAGAN00114518-4529.

37. Attached hereto as Exhibit 36 is a true and genuine copy of the Shipping Price Quote Sheet dated October 29, 2012, Bates stamped KS0002550-2554.

38. Attached hereto as Exhibit 37 is a true and genuine copy of the transcript of John Wong's January 19, 2017 deposition.

39. Attached hereto as Exhibit 38 is a true and genuine copy of video recording dated November 20, 2013, Bates stamped HAGAN00003747.

40. Attached hereto as Exhibit 39 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00003741.

41. Attached hereto as Exhibit 40 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00003752.

42. Attached hereto as Exhibit 41 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00003744.

43. Attached hereto as Exhibit 42 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00003750.

44. Attached hereto as Exhibit 43 is a true and genuine copy of the Manhattan Area Update dated November 22, 2013, Bates stamped KS0002496-2502.

45. Attached hereto as Exhibit 44 is a true and genuine copy of the Special Manhattan Area Update dated December 6, 2013, Bates stamped UPS_0020151-154.

46. Attached hereto as Exhibit 45 is a true and genuine copy of the Manhattan Area Update dated March 21, 2014, Bates stamped UPS_0006953-6958.

47. Attached hereto as Exhibit 46 is a true and genuine copy of an email from Tripp Singer dated April 2, 2014, regarding the "Jim Hillquist message about UPS shipping compliance on 03-21-14," Bates stamped UPS_0009133-9134.

48. Attached hereto as Exhibit 47 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00003756.

49. Attached hereto as Exhibit 48 is a true and genuine copy of the John Wong Price Sheet, Bates stamped HAGAN0002623.

50. Attached hereto as Exhibit 49 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00003657.

51. Attached hereto as Exhibit 50 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00003648.

52. Attached hereto as Exhibit 51 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00003649.

53. Attached hereto as Exhibit 52 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00003708.

54. Attached hereto as Exhibit 53 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00003709.

55. Attached hereto as Exhibit 54 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00101123.

56. Attached hereto as Exhibit 55 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00003621.

57. Attached hereto as Exhibit 56 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00101076.

58. Attached hereto as Exhibit 57 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00101079.

59. Attached hereto as Exhibit 58 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100592.

60. Attached hereto as Exhibit 59 is a true and genuine copy of a video recording dated October 28, 2013, Bates stamped HAGAN00101094.

61. Attached hereto as Exhibit 60 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00100582.

62. Attached hereto as Exhibit 61 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00100586.

63. Attached hereto as Exhibit 62 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100605.

64. Attached hereto as Exhibit 63 is a true and genuine copy of a video recording dated November 25, 2013, Bates stamped HAGAN00100584.

65. Attached hereto as Exhibit 64 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100585.

66. Attached hereto as Exhibit 65 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100602.

67. Attached hereto as Exhibit 66 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00100596.

68. Attached hereto as Exhibit 67 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100580.

69. Attached hereto as Exhibit 68 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00100588.

70. Attached hereto as Exhibit 69 is a true and genuine copy of excerpts from the 2014 UPS Daily Rates Guide, Bates stamped UPS_0046231 and UPS_0046301. A complete true and genuine copy of the 2014 UPS Daily Rates Guide is attached as Exhibit B to the Declaration of Mike Stutler dated April 18, 2017 (ECF 356-9 to 356-16).

71. Attached hereto as Exhibit 70 is a true and genuine copy of the Quick Reference Guide Using the Shipping Quote Price Quote CMS dated October 4, 2013, Bates stamped JW0001385-1390.

72. Attached hereto as Exhibit 71 is a true and genuine copy of an email from Tripp Singer dated June 2, 2015, Bates stamped UPS_0012370-374.

73. Attached hereto as Exhibit 72 is a true and genuine copy of an email from Jay Schlessinger dated May 5, 2015, Bates stamped UPS_0013245-13248.

74. Attached hereto as Exhibit 73 is a true and genuine copy of an email from Tripp Singer dated November 15, 2013, Bates stamped HAGAN00107137.

75. Attached hereto as Exhibit 74 is a true and genuine copy of an email from Bradley Kaplan concerning the Ray Hayden Customer Complaint dated November 6, 2013, Bates stamped BK0003222-3223.

76. Attached hereto as Exhibit 75 is a true and genuine copy of the NYPS History and Preliminary Secret Shopper Results dated December 1, 2013, Bates stamped HAGAN00003479-3517.

77. Attached hereto as Exhibit 76 is a true and genuine copy of the NYPS History and Financial Impact of The UPS Store Actions dated February 23, 2014, Bates stamped HAGAN00111440-449.

78. Attached hereto as Exhibit 77 is a true and genuine copy of the Impact from UPS Compliance Threats, Exhibit 7 from the deposition of Thomas Hagan, Bates stamped HAGAN00001818-1825.

79. Attached hereto as Exhibit 78 is a true and genuine copy of an Excel document of the Hagans' Monthly Reports, Exhibit 15 from the deposition of Thomas Hagan, Bates stamped MQS_00000713.

80. Attached hereto as Exhibit 79 is a true and genuine copy of an Excel document of the Hagans' Monthly Reports, Exhibit 16 from the deposition of Thomas Hagan, Bates stamped MQS_00000448.

81. Attached hereto as Exhibit 80 is a true and genuine copy of the Hagan Store Tanmor, Inc. Franchise Agreement, Exhibit 10 from the deposition of Thomas Hagan (ECF No. 108-12).

82. Attached hereto as Exhibit 81 is a true and genuine copy of an email from Robert Hagan with attachments dated January 20, 2013, Exhibit 55 from the deposition of Robert Hagan, Bates stamped HAGAN00006119-6170.

83. Attached hereto as Exhibit 82 is a true and genuine copy of the transcript of Gary Stout's December 13, 2016 deposition.

84. Attached hereto as Exhibit 83 is a true and genuine copy of the transcript of Paul Puccini's November 3, 2016 deposition.

85. Attached hereto as Exhibit 84 is a true and genuine copy of a video recording dated November 20, 2013, Bates stamped HAGAN00100625.

86. Attached hereto as Exhibit 85 is a true and genuine copy of an email from Tripp Singer dated October 31, 2013, Bates stamped UPS_0011792-11806.

87. Attached hereto as Exhibit 86 is a true and genuine copy of the transcript of Michael Stutler's December 14, 2016 deposition.

88. Attached hereto as Exhibit 87 is a true and genuine copy of the Declaration of Robert Hagan dated December 4, 2015 (ECF No. 116).

89. Attached hereto as Exhibit 88 is a true and genuine copy of an email from Tim Davis dated May 5, 2013, Bates stamped HAGAN00030350.

90. Attached hereto as Exhibit 89 is a true and genuine copy of a Robert Hagan-Jim Hillquist email thread dated November 15, 2013, Bates stamped UPS_0002528-2529.

91. Attached hereto as Exhibit 90 is a true and genuine copy of the Mohan Buxani Acknowledgment of Compliance Letter dated April 4, 2014, Bates stamped UPS_0020774-778.

92. Attached hereto as Exhibit 91 is a true and genuine copy of the Abu Rahman Acknowledgment of Compliance Letter dated April 4, 2014, Bates stamped UPS_0020801-805.

93. Attached hereto as Exhibit 92 is a true and genuine copy of the Ketan Seth Acknowledgment of Compliance Letter dated April 4, 2014, Bates stamped UPS_0020810-814.

94. Attached hereto as Exhibit 93 is a true and genuine copy of the Jerome Taylor Acknowledgment of Compliance Letter dated April 4, 2014, Bates stamped UPS_0020783-787.

95. Attached hereto as Exhibit 94 is a true and genuine copy of the Bradley Kaplan Acknowledgement of Compliance Letter dated April 4, 2014, Bates stamped UPS_0020792-796.

96. Attached hereto as Exhibit 95 is a true and genuine copy of an email from Tim Davis dated May 5, 2015, Bates stamped UPS_0005755-5758.

97. Attached hereto as Exhibit 96 is a true and genuine copy of the November 2013 Ranking Report, Bates stamped UPS_0020413.⁴

98. Attached hereto as Exhibit 97 is a true and genuine copy of the December 2013 Ranking Report Bates stamped UPS_0006897.⁵

99. Attached hereto as Exhibit 98 is a true and genuine copy of the January 2014 Ranking Report Bates stamped UPS_0007388.⁶

100. Attached hereto as Exhibit 99 is a true and genuine copy of Tripp Singer's Violation of Area Franchisee Obligations Letter dated October 3, 2013, Bates stamped HAGAN00116414-6415.

101. Attached hereto as Exhibit 100 is a true and genuine copy of an email chain from Judith Milner concerning Ketan Seth, dated June 26, 2014, Bates stamped UPS_0019638-641.

102. Attached hereto as Exhibit 101 is a true and genuine copy of an email chain from Tripp Singer concerning Aby Rahman, dated October 24, 2014, Bates stamped UPS_0019171-172.

⁴ The Court Ordered this document to be filed under seal (ECF No. 378).

⁵ The Court Ordered this document to be filed under seal (ECF No. 378).

⁶ The Court Ordered this document to be filed under seal (ECF No. 378).

103. Attached hereto as Exhibit 102 is a true and genuine copy of an audio recording dated November 18, 2013, Bates stamped HAGAN00101115.

104. Attached hereto as Exhibit 103 is a true and genuine copy of the Manhattan Area Update dated May 1, 2015, Bates stamped UPS_0007039-7044.

105. Attached hereto as Exhibit 104 is a true and genuine copy of the Hagans' Second Request for Admissions to the Franchisees, dated February 13, 2017.

106. Attached hereto as Exhibit 105 is a true and genuine copy of the Hagans' Second Request for Admissions to TUPSS, dated February 13, 2017.

107. Attached hereto as Exhibit 106 is a true and genuine copy of the Hagans' Second Request for Admissions to UPS, dated February 13, 2017.

108. Attached hereto as Exhibit 107 is a true and genuine copy of the Franchisees' Response to the Hagans' Second Requests for Admission, dated March 15, 2017.

109. Attached hereto as Exhibit 108 is a true and genuine copy of TUPSS's Response to the Hagans' Second Requests for Admission, dated March 15, 2017.

110. Attached hereto as Exhibit 109 is a true and genuine copy of UPS's Response to the Hagans' Second Requests for Admission dated March 15, 2017.

111. Attached hereto as Exhibit 110 is a true and genuine copy of TUPPS's Supplemental Responses and Objections to the Hagans' Second Requests for Admissions, dated May 17, 2017.

112. Attached hereto as Exhibit 111 is a true and genuine copy of the Declaration of Ed Burnich dated September 27, 2016 (ECF No. 266).

113. Attached hereto as Exhibit 112 is a true and genuine copy of an email from Tripp Singer dated January 14, 2012 attaching the Area Update dated January 13, 2012 and the Center Compliance Audit checklist, Bates stamped UPS_0002994-3000, UPS_0003013-3025.

114. Attached hereto as Exhibit 113 is a true and genuine copy of the Manhattan Area Update dated November 8, 2013, Bates stamped UPS_0006919-6925.

115. Attached hereto as Exhibit 114 is a true and genuine copy of an email from Tripp Singer attaching a Bonus Plan template dated January 9, 2013, Bates stamped HAGAN00005970-5974.

116. Attached hereto as Exhibit 115 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00100611.

117. Attached hereto as Exhibit 116 is a true and genuine copy of a video recording dated December 2, 2013, Bates stamped HAGAN00003757.

118. Attached hereto as Exhibit 117 is a true and genuine copy of a video recording dated January 27, 2014, Bates stamped HAGAN00003740.

119. Attached hereto as Exhibit 118 is a true and genuine copy of a letter addressed to Magistrate Gorenstein copying Movants' counsel dated July 15, 2016.

120. Attached hereto as Exhibit 119 is a true and genuine copy of a TUPSS generated Sales Performance Evaluation and Scorecard, Bates stamped BK00003410-3416.

I, Blair C. Fensterstock, under penalty of perjury, declare that the foregoing is true and correct.

Dated: New York, New York
May 31, 2017

/s/ Blair C. Fensterstock
BLAIR C. FENSTERSTOCK